IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4873 of 2005

Between:

L. Ravindrababu, s/o. Siva Prasad,
R/o. Tenali, Guntur District.

..... PETITIONER

AND

Regional Manager, APSRTC, GUNTUR.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more in the nature of writ of mandamus declaring the action of the respondent in not accepting the tender of the petitioner for running Milk Parlour and Ice cream stall in NTR Bus Station of APSRTC, Guntur and calling for fresh tenders for the said stall by tender notification dt. 2.3.2005 is highly unjust, arbitrary, mala fide illegal and unsustainable and consequentially direct the respondent to accept the offer of the petitioner and allot the stall in favour of the petitioner and to pass such other or further orders as this Hon'ble Court may deem fit.

Counsel for the Petitioner: MR.C.RAMACHANDRA RAJU

Counsel for the Respondent No.1: MR.R.MANMADHA REDDY (SC FOR APSRTC)

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 4873 of 2005

O R D E R:

The writ petition is filed seeking to declare the action of the respondent in not accepting the tender of the petitioner for running milk parlour and ice cream stall in NTR Bus Station of APSRTC, Guntur and calling for fresh tenders for the said stall by tender notification dated 2.3.2005 as illegal and arbitrary.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The respondent issued tender notification dated 27.9.2004 calling for tenders for running milk parlour and ice cream stall in N.T.R. Bus Station, Guntur. The petitioner submitted his tender on 12.10.2004 offering a sum of Rs.70,000/- as monthly licence fee. The tenders were opened on 12.10.2004 but no decision was taken by the tender committee on his tender. On 14.10.2004 the respondent called him for negotiations for increase in his offer for which he agreed to increase his offer for a sum of Rs.75,300/-. But the respondent did not communicate his response. Again on 15.11.2004 the petitioner was called for further negotiations. At that time the petitioner agreed to increase the offer for a sum of Rs.78,500/-, which was more than the licence fee for the previous contract of Rs.78,289/-. The respondent, having been satisfied, informed the petitioner that he will communicate the order of allotment. As the respondent was delaying the matter, the petitioner

requested to give the allotment order but the respondent went on postponing the same. To his utter surprise, he received a telegram on 6.3.2005 that his tender was not accepted and the respondent ordered re-tenders. To the same effect he also received a letter on 7.3.2005. In the telegram and the letter the respondent stated that the offer of the petitioner for a sum of Rs.75,300/- was not accepted by the competent authority. The case of the petitioner is that as he increased the offer from Rs.75,300/- to Rs.78,500/-, the respondent is expected to consider his offer for a sum of Rs.78,500/- and the respondent is not at all justified in not considering the same. The respondent having received huge amount of Rs.3,20,000/- by way of demand draft as earnest money along with his tender is not justified in rejecting his offer after lapse of long time. Hence, the present writ petition.

Learned counsel for the petitioner contended that when the petitioner offered a sum of Rs.78,500/- at the time of negotiations second time, the respondent did not choose to give any decision with regard to the said offer and therefore the impugned action is totally a non-application of mind; that after lapse of more than six months arbitrarily the proceedings dated 3.3.2005 was issued wherein it is mentioned that the offer of the petitioner is Rs.75,300/- but as a matter of fact the petitioner offered Rs.78,500/- and hence he prays to quash the 2nd notification calling for the fresh tenders.

On the other hand, learned standing counsel appearing for the respondent on instructions contended that in the year 2003 the rate quoted by the highest bidder was Rs.78,289/- as licence fee. The petitioner became the highest bidder at that time and he started

business, but on 7.8.2004 before completion of three years he submitted a representation to close his business by issuing three months notice and after considering his representation, the licence was closed. There upon the respondent called for open tenders by notification dated 27.9.2004. In that tender, only the present petitioner participated wherein he offered Rs.78,199/- towards licence fee. As the same was less than the previous licence, the tender committee did not accept the same and in the second negotiations the petitioner offered for Rs.78,500/- towards licence fee if mineral water is also included as one of the items along with milk stall and ice cream parlour and the same was not acceptable and therefore the case of the petitioner was not accepted and therefore there is no arbitrary action on the part of the competent authority in not accepting the offer made by the petitioner in the negotiations. Therefore, he prays to dismiss the writ petition.

In the matter of tenders, the scope of judicial review is very much limited. The aspects such as whether a particular tenderer was discriminated or that there is no fair-play on the part of the respondent have to be considered. Any tenderer has no right to question the tenders. Initially the tender notification was issued on 27.2.2003 calling for tenders for allotment of dairy parlour, ice cream and mineral water stall at N.T.R. Bus-Station, Guntur. The amount quoted at that time by the petitioner was Rs.78,289/-. But, in the middle of the licence period the petitioner gave a representation to permit him to close the business and the same was accepted by the respondent. That necessitated to call for open tenders by the respondent again on 27.9.2004. At that time the petitioner participated in the tender and offered Rs.71,199/- towards monthly

licence fee. The tender committee negotiated for increase of licence fee as the offer was less than the previous licence fee of Rs.78,289/-. The petitioner agreed to increase the offer to Rs.75,300/- but the tender committee did not accept the same. The case of the petitioner is that he offered Rs.78,500/- which is more than the previous licence fee and without assigning any reasons the respondent kept quite for more than five months and issued proceedings dated 3.3.2005 that his tender was not accepted. However, the offer of Rs.78,500/- made by the petitioner is a conditional offer, that is to say, if the selling of mineral water is also included along with ice cream stall and milk parlour. As the same was not accepted, the tender committee did not accept his tender. Therefore, there is no arbitrary action on the part of the respondent in rejecting the tender of the petitioner. It is not specifically stated in the affidavit that in the negotiations the offer of Rs.78,500/- is only relating to milk parlour and ice cream stall but on instructions the learned counsel for the petitioner contended that the said offer is made by the petitioner if other item i.e. mineral water is also included. Since the same is not one of the items in the tender notification, the same was rejected. As seen from the tender notification dated 27.9.2004, sealed tenders are invited in respect of allotment of stalls for running milk parlour and ice cream stall only. It is not the specific case of the petitioner that his offer for Rs.78,500/- is for running milk parlour and ice cream stall. Since the previous bid amount was for Rs.78,289/-, the tender committee expected that the licence fee would be more than that amount. Since the amount quoted by the petitioner was less than the amount and the increase is not even 10% of the old licence fee, the respondent rightly rejected the offer. It is not a case of indiscrimination so as to call for

interference by this court. So also, it is not a case of acting unfairly by the respondent towards the petitioner. Since the petitioner himself participated in the negotiations, it is not expected from the respondent to give any reasons in rejecting the offer made by the petitioner in the negotiations.

No doubt the petitioner kept the amount of Rs.3,20,000/- towards earnest money at the time of calling for tenders in pursuance of the notification dated 27.9.2004 and for more than six months that amount was kept with the respondent. Since the negotiations were going on, the same cannot be said to be unreasonable delay. In the first instance the petitioner was called for negotiations on 12.10.2004. Again on 19.11.2004 the petitioner was called for further negotiations. No doubt the respondent ought to have taken a decision for returning the E.M.D. in the month of November, 2004 and when the offer of the petitioner was not acceptable, the respondent should have refunded the E.M.D. But, due to administrative lapses the respondent had to obtain permission from the Chairman and Managing Director to call for further tenders. It is stated by the learned counsel for the respondent that in pursuance of the representation made by the petitioner on 11.3.2005, a pay order was sent to the Accounts Officer, Guntur to issue a cheque in favour of the petitioner and as a matter of fact the cheque was issued on 14.3.2005. Therefore, from the facts and circumstances it is not a case of unreasonable delay in keeping the amount without justification. For the delayed refund of E.M.D., the remedy of the petitioner is elsewhere but not certainly before this court. No mala fides are attributed to any one of the tender committee or the respondent.

Therefore, the writ petition is totally devoid of merit and it is accordingly dismissed at the admission stage.

K.C. Bhanu, J.

Date: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Regional Manager, APSRTC, GUNTUR.

2. 2 CD copies